Amendments to the Drawings

The attached sheets of drawings include changes to Figs. 2, 5 and 6. These sheets replace the original sheets of drawings.

Attachment: Replacement sheets.

Remarks

Applicant respectfully requests reconsideration of the present U.S. Patent application in view of the amendments above and comments below. Applicant presently amends the abstract, specification, Figures 2, 5, and 6, and claims 1-3, 8, 10, 14, 17, 21, 29-31, 33, and 35. Claims 4, 18-20, and 32-34 have been canceled. Thus, claims 1-3, 5-17, 21-31, 33, and 35 are pending.

Interview Summary

Applicant's representative conducted a telephone interview with Examiner Graysay on February 1, 2007. The substance of the interview is discussed below. No agreement was reached as a result of the interview.

Objections to the Drawings

Figures 2, 5, and 6 were objected to for various informalities. Applicant made the following amendments to overcome the objections and respectfully request the objections be withdrawn:

In Fig. 2, reference number 50' has been replaced with reference number 51;

In Fig. 5, the additional reference number 60 (without a lead line) has been deleted and reference number 76 has been added; and

In Fig. 6, reference numbers 16' and 18' have been replaced with reference numbers 17 and 19, respectively, and reference number 65 has been replaced with reference number 64.

Objections to the Specification

The abstract was objected to for including language that could be inferred and the detailed description was objected to for various informalities. Applicant amended the specification substantially as suggested by the Examiner, with one notable exception. With regard to description of Figure 2 in the paragraph on page 11 that begins on line 18, Applicant respectfully submit that the specification reads appropriately. For ease of reference, that paragraph reads as follows, with emphasis added to the objected to language:

> FIG. 2 shows the face block 12 with the groove 22 only partially bisecting the block. The groove 22 does not entirely pass through the block, but terminates at a sloped end surface 24 that faces generally ***upward and rearwardly*** of the block. Thus, the lower portion of the face block 12 is solid and unbroken by the

groove 22, thereby increasing the strength of the block and decreasing the risk of breakage at the groove 22.

The groove 22 is formed in the rear face of the block 12. The bottom, or end, surface 24 slopes downwardly from a first location inside the groove 22 to a second location where the groove opens at the rear face of the block. Thus, the sloped end surface 24 faces upwardly toward the upper surface of the block and rearwardly toward the rear surface of the block. Accordingly, Applicant requests that the objections to the specification be withdrawn.

Objections to the Claims

Regarding the objections to claims 4, 15, 16, 20, 28, and 33, Applicant agrees that although the claims are directed to retaining walls and a method for forming retaining walls, fill material retained by the retaining walls are not actually part of the walls. However, when a tie-back sheet is used in a wall, such as recited in claim 4, the tie-back sheet actually extends into the fill material behind the wall, as opposed to being "adapted to extend" into the fill material (which is the case before it is installed in the wall). Claim 4 as currently drafted does not positively recite fill as an element of the claim; the fill material is merely part of the environment in which the wall exists. Applicant notes that the limitation "the depth of the unitary blocks is equal to the depth of the wall at the unitary blocks" has been removed from the claims to avoid any possible inconsistency in claim interpretation. Thus, Applicant believes that claim 4 reads appropriately. Claims 15, 16, and 28 are believed to be properly drafted for similar reasons. Claims 20 and 33 have been canceled and the feature of a reinforcing or tie-back sheet has been added to claims 17 and 29. Claims 17 and 29 are believed to be properly drafted for the reasons stated above. Accordingly, Applicant requests that the objections to the claims be withdrawn..

35 U.S.C. § 102 Rejections

Claims 1-35 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by various Westblock Systems publications (2-WS, 3-WS, 4-WS, herein also referred to as "the sales literature") as listed in the Office Action. Claims 1-3, 5-7, 9-19, 21-25, 29-32, 34 and 35 stand rejected under 35 U.S.C. § 102(b) as allegedly anticipated by Hammer (U.S. Pat. No. 5,350,256; "Hammer" or "the '256 patent"). Applicant traverses these rejections in view of the comments below.

Applicant previously submitted selected pages of 2-WS (GravityStone Contractor's Manual) that were believed to be most relevant to the present application. Applicant submits herewith an IDS along with an entire copy of 2-WS.

Claim 1:

A. Claim Interpretation

At the outset, Applicant respectfully disagrees with the limited interpretation given claim 1. Beginning at the bottom of page 5, the Office action recites:

> Claim 1: Claim 1 has been interpreted as being limited such that the unitary blocks and block assemblies cannot be on the same course due to the courses being first and second and the recitation "above or below" at the penultimate line of the claim.

The Office action described a similar limited reading of independent claim 26. However, nothing in the language of either claim suggests such a limited interpretation be given. Claim 1 recites that *at least a portion* of the first set of courses comprises unitary blocks and that *at least a portion* of the second set of courses comprises block assemblies. Thus, the first set of courses could include block assemblies and the second set of courses could include unitary blocks. Consequently, Applicant cedes no scope short of that given by the literal language of claim 1.

B. Westblock Sales Literature

Applicant respectfully submits that the action misreads portions of the Westblock sales literature (2-WS, 3-WS, 4-WS), which results in erroneous factual allegations. With a proper reading, the Westblock sales literature cannot form the basis for a proper 35 U.S.C. § 102(b) rejection with regard to claim 1, because the sales literature utterly fails to disclose the respective combination of features recited in the claim as discussed in detail below.

Independent claim 1, as amended, recites a retaining wall having a front and a back, the wall comprising

> a first set of a plurality of courses, at least a portion of each comprising a plurality of unitary blocks placed side-by-side with respect to each other, wherein each unitary block has a depth extending in a direction from the front to the back of the wall and is not connected to other blocks in the direction of the block depth; and
>
> a second set of a plurality of courses, at least a portion of each comprising a plurality of block assemblies placed side-by-side with respect to each other, each block assembly comprising at least two interconnected block components;
>
> wherein the first set of courses is located above or below the second set of courses;

> wherein the first set of courses comprises at least first and second courses of unitary blocks and a tie-back sheet is positioned between the first and second courses of the first set and extends rearwardly into fill material retained behind the wall.

None of the Westblock sales literature (2-WS, 3-WS, and 4-WS) discloses a hybrid retaining wall as defined in amended claim 1.

For example, the rejection to claim 1 under § 102(b) relies primarily on 3-WS (Westblock Systems sales literature entitled "GravityStone, So Simple, It's Advanced," 4 pages), and in particular the figure at the bottom of page 2 of 4, labeled "Fill Site," to teach a hybrid wall. The action contends that diagram labeled "Fill Site" depicts four feet of courses comprised of unitary blocks (referred to as "fat face" in the sales literature) located above eight feet of courses comprised of modular blocks. As explained in the telephone interview of February 1, 2007, this diagram does not teach or suggest a hybrid wall.

Taken in context, the two diagrams at the bottom of page 2 of 3-WS are simplified design charts or selection guides of the type in Table 2.3.4 on page 17 of 2-WS (the GravityStone Contractor's Manual); the diagrams do not depict actual walls. Similar to the selection guide of 2-WS, the simplified selection guides of 3-WS show the type of block system that is recommended based on the type of site (e.g., "cut" or "fill") and total wall height. In particular, the "Fill Site" selection guide in 3-WS suggests using the "modular" block system for walls with a total height less than 8 feet, the "M.S.E. fat face" or the "M.S.E. mini-cell" system for walls between 8 and 12 feet, and the "M.S.E. single-cell" for walls over 12 feet high. This selection guide does not depict a wall having four feet of courses comprised of "fat face" blocks between courses comprised of "modular" block assemblies and courses comprised of "single-cell" block assemblies.

Sales literature document 4-WS (Westblock Systems sales literature entitled "GravityStone, So Simple, So Advanced," 2 pages) further explains the design charts provided in 3-WS. Specifically, 4-WS recites in part (with emphasis added):

> Short walls, cut embankments, utilities and penetrations.
>
> For all site conditions requiring retaining ***walls up to 8' tall***, and for sites with ***cut embankments up to 15' tall***, a GravityStone wall utilizing ***modular*** cells is often the most cost effective solution.

Intermediate height walls for fill sites.

For ***site conditions that require fill*** to raise grade ***Geotextile reinforcement*** [M.S.E.] ***incorporated with the single unit GravityStone Fat Face*** or Mini-Cell will provide the most attractive, stable, and efficient wall design.

Tall walls for cut and fill sites:

Over 50% of the Geotextile layers normally required for walls in this height range can be eliminated when single cell is combined with Geotextile appropriate for tall and high stress walls.

Comparing the "Fill Site" and "Cut Site" design charts in 3-WS with 4-WS, both documents recommend: (1) utilizing modular block assemblies without geogrid for all sites (cut sites and fill sites) up to 8 feet high and for cut sites up to 15 feet high (as depicted in the design charts in 3-WS); (2) using geogrid reinforced "fat face" or mini-cell for constructing intermediate walls (walls over 8 feet high) at fill sites (as depicted in the "Fill Site" design chart in 3-WS); and (3) and using M.S.E. single-cell for relatively taller walls (as depicted in the "Fill Site" and "Cut Site" design charts in 3-WS). In both documents, the modular block system is recommended for short walls and the "fat face" and mini-cell systems are recommended for intermediate walls, but there is no suggestion to combine the modular and "fat face" systems. 4-WS further states that using geogrid reinforced "fat face" or mini-cell for constructing intermediate walls "will provide the most attractive, stable, and efficient wall design." Nowhere does 4-WS suggest using geogrid reinforced "fat face" or mini-cell *in combination* with modular block assemblies to achieve the most efficient wall design.

Applicant also points out that the figures of short, intermediate, and tall walls in 4-WS do not show any hybrid walls. Indeed, the figure illustrating "short walls, cut embankments, utilities and penetrations" shows a wall constructed entirely of modular block assemblies without geogrid. The figure illustrating "intermediate height walls for fill sites" shows a wall constructed entirely of M.S.E. fat face blocks with geogrid reinforcement. Finally, the figure illustrating "tall walls for cut and fill sites" shows a wall constructed entirely of single-cell block assemblies.

As noted above, the action contends that the "Fill Site" chart of 3-WS discloses a hybrid wall for a fill site constructed from 8 feet of modular blocks and 4 feet of M.S.E. fat face blocks constructed over the modular blocks. The notion that the "Fill Site" chart is a hybrid wall is not supported by any teaching or suggestion in the reference because 4 feet of courses of M.S.E. fat

face blocks would not be constructed between 8 feet of modular block assemblies and upper courses of M.S.E. single-cell block assemblies unless such a construction would be warranted based on the site conditions of the particular application. If constructing a hybrid wall, the transition point for transitioning from modular block assemblies to M.S.E. fat face blocks would be dictated by the site conditions and would not necessarily be the same for all hybrid walls. Transitioning from modular block assemblies to M.S.E. block assemblies at the 8-foot level is completely arbitrary and is not based on any design principles.

Explaining further, Applicant first notes that a "cut site" generally is referred to as a site where excavation of the native embankment is required. A "fill site" generally is referred to as a site where little or no excavation is required. As explained in the present application, the placement of unitary blocks and block assemblies in a hybrid wall depends on the needs of the particular application, and in particular, the amount of excavation required and the available space behind the wall. For example, if constructing a wall at a cut site, it may be most economical to use block assemblies without a geogrid reinforcement at the base of the wall to minimize excavation and then construct the upper layers of the wall (where less excavation is required) from unitary block with a geogrid reinforcement. The transition point from block assemblies to unitary blocks depends primarily on the overall height of the wall and the cut height of the native embankment. Conversely, if constructing a wall at a fill site but the soil near the surface includes obstacles such utility conduits or building foundations, it may be most economical to use unitary blocks with geogrid reinforcement at the base of the wall and then construct the upper layers, where it may not be practical or possible to use geogrid reinforcement because of the obstacles, from block assemblies. In the latter case, the transition point from unitary blocks to block assemblies would depend primarily on the depth that the obstacles extend into the ground behind the wall.

Referring again to the "Fill Site" chart in 3-WS, 3-WS does not provide any explanation as to why it would be desirable to transition from modular block assemblies to M.S.E. fat face assemblies at the arbitrary height of 8 feet. Rather, this chart merely teaches the reader how to select the single system that would be most efficient based on the wall height and the site conditions.

Next, 2-WS (the GravityStone Contractor's Manual) also fails to teach (or even suggest) a hybrid wall comprising courses of unitary blocks reinforced by at least one tie-back sheet

located above or below courses of block assemblies. In the rejection of claim 1, the action states that "section 2.3.4 [of 2-WS] mentions that the systems (M.S.E. and modular) are combined on the same wall for the most cost-effective wall system." Applicant first notes that the "modular" system described in the Westblock literature refers to a wall constructed from block assemblies without geogrid reinforcement. The "M.S.E." system described in the Westblock literature refers to a wall constructed from blocks or block assemblies with geogrid reinforcement, but does not necessarily require unitary blocks.

Section 2.3.4 of 2-WS, when read in context with the selection guidelines of 2-WS, refers to utilizing either the M.S.E. or modular system along the length of a wall, so as to use the most appropriate system that is best suited for the site conditions at particular locations along the length of the wall. Indeed, 2-WS provides the following guidelines for selecting the system that adapts best to the site condition:

> **MSE**: Minimizes material and labor costs for wall facing heights greater than 7 ft. Allows use of lower quality (cost) soil infill volume. Faster installation rates on wall heights > 10 ft. Most economical for fill walls.
> **Modular**: Minimizes horizontal space required by reducing wall infill volume when retaining; good soil, or marginal soils for wall heights < 7 ft. Faster installation on wall heights < 10 ft. Most economical for cut walls and when space for walls is constrained by site geometry.

(2-WS, page 16.) Because the wall height can change along the length of the wall and the site conditions can change from a cut site to a fill site, and vice versa, along the length of the site, either system can be utilized along the length of the wall as dictated by the varying site conditions and/or the wall height. However, 2-WS is completely silent in regards to utilizing both systems in the same section of a wall (i.e., courses of modular constructed over courses of M.S.E., or vice versa).

Table 2.3.4 on page 17 of 2-WS is a more detailed design selection guide than that shown in 3-WS (discussed above). This table serves as a preliminary design guide for selecting the most appropriate system (either the M.S.E. or modular system) based on the overall wall height, soil conditions, and cut ratio. Using this table, a designer can design a wall that includes both systems at different locations along the length of a wall if the soil conditions, height, or cut ratio change along the length of the site. However, this table clearly does not suggest or provide any guidance for combining both systems in the same section of a wall. Further, detailed design

tables for the Westblock M.S.E. and modular systems are provided on pages 88-91 and pages 95-98 of 2-WS. None of these design tables shows how to construct a wall from courses of M.S.E. unitary blocks and courses of block assemblies in the same section of a wall, as recited in claim 1.

Section 3.5 of 2-WS provides examples of using both the M.S.E. system (geogrid reinforced) and modular system (non-geogrid reinforced) in the same wall. In particular, section 3.5.1 states: "Modular GravityStone can provide a stable structure in front of manholes, boulders, or jutting rocks that occur intermittently *along the length of an MSE structure.*" (emphasis added.) As shown in the accompanying figure 3.5.1, the section of the wall in front of the obstacle is comprised entirely of modular block assemblies without geogrid reinforcement. Section 3.5.1 therefore refers to an M.S.E. wall having sections along the length of the wall constructed entirely from modular block assemblies.

Section 3.5.3 of 2-WS states that "Fat Face (11.8") or Mini-Cell (21") may be required to provide clearance of vertical support posts for guard rails, hand rails, fences, or light standards near the top and face of the wall." The accompanying figure 3.5.3 shows a section of a wall comprises entirely of modular block assemblies except for an upper layer of capping blocks that serves as a curb or edge restraint for retaining gravel at the top of the wall. In this application, the upper layer of capping blocks is not a structural layer for earth retention, and therefore does not have or require a reinforcing tie-back sheet as required in claim 1.

Finally, section 3.5.4 of 2-WS states: "Lateral resistance to heavy surcharge loadings from bulk storage or tractor trailer type vehicles may be increased by using Multi-Cell GravityStone. The upper portions of any wall can be expanded from Fat Face and Single-Cell to Multi-Cell for additional lateral stability. This is especially helpful when a Jersey type concrete barrier is placed on top of the retaining wall to prevent vehicles from rolling off." In the application described here, a single layer of multi-cell assemblies are used at the top of the wall to form a concrete footing for enhancing the ability of a road barrier to resist lateral loads from a vehicle. No illustration is provided in section 3.5.4, but figure 5.7.2 on page 82 of 2-WS shows a single layer of face blocks at the top of a wall serving as a concrete footing directly underneath a Jersey concrete barrier. As shown, the footing is formed by pouring concrete over the upper layer of face blocks underneath the barrier. The area behind the upper layer is reinforced with

concrete and rebar. This upper layer is not a structural layer for earth retention, and therefore does not have or require a reinforcing tie-back sheet as required in claim 1.

Accordingly, for at least the foregoing reasons, neither 2-WS, 3-WS, nor 4-WS teaches or suggests a hybrid wall as recited in claim 1.

C. Hammer's '256 Patent

The action also rejects claim 1 as allegedly being anticipated by the '256 patent. Applicant respectfully disagrees that '256 patent teaches the retaining wall set out in claim 1.

The '256 patent discloses a retaining wall comprising a plurality of block assemblies placed side-by-side in multiple courses. As pointed out by the examiner, the courses comprise "unitary" face blocks 24. However, as shown in FIG. 1 of the '256 patent, each face block 24 is connected to multiple other blocks in the direction of the block depth to form a block assembly. Thus, the retaining wall disclosed in FIG. 1 of the '256 patent clearly does not satisfy the limitations of claim 1, and in particular, the claim limitation "wherein each unitary block has a depth extending in a direction from the front to the back of the wall and is not connected to other blocks in the direction of the block depth."

In the rejection of claim 1, the action references col. 5, lines 51-54 of the '256 patent, which states: "The face blocks alone may attach to anchors horizontally bored into a slope, or to any compatible anchor mounted to a vertical surface such as a building façade." Applicants agree that the face blocks, when supported by anchors extending into the slope, are not connected to other blocks in the direction of the block depth. Each course of a wall can be formed from face blocks supported by anchors extending into the native slope behind the wall. However, there is no teaching or suggestion for a ***hybrid wall*** comprising courses of face blocks alone ***and*** courses of block assemblies.

Further, the construction technique described at col. 5, lines 51-54 would not be combined with the wall construction shown in FIG. 1 of the '256 patent. The wall shown in FIG. 1 is constructed by first excavating the native embankment, laying the first course of block assemblies, backfilling the voids in the first layer and the space behind the first layer, and then repeating the process of forming a course and backfilling for each successive course in the wall. The construction technique described at col. 5, lines 51-54 of the '256 patent requires drilling bores into the native embankment, inserting anchors into the bores, and attaching face blocks to the anchors (a technique referred to as "soil nailing"). If the native embankment is first

excavated to install the block assemblies as taught by the '256 patent, then courses of face blocks supported by anchors cannot be formed directly over the courses of block assemblies.

Accordingly, for at least the foregoing reasons, claim 1 is not anticipated by the '256 patent. The 35 U.S.C. § 102(b) rejections of claim 1 therefore should be withdrawn.

Independent Claim 17:

Independent claim 17 recites a retaining wall having a front and a back, the wall comprising:

> a plurality of courses, at least a portion of each comprising a plurality of unitary blocks placed side-by-side with respect to each other in respective courses, each unitary block having a front surface at the front of the wall and a back surface at the back of the wall; and
>
> a plurality of courses, at least a portion of each comprising a plurality of block assemblies placed side-by-side with respect to each other in respective courses, each block assembly comprising at least a first block and second block connected to the first block and extending rearwardly therefrom;
>
> wherein the courses including said block assemblies extend from a base of the wall to a height between the wall base and top of the wall, and the courses including said unitary blocks are located above the courses including said block assemblies; and
>
> one or more wall-reinforcing sheets, each wall reinforcing sheet disposed between two vertically adjacent courses including said unitary blocks and extending rearwardly into fill material retained behind the wall.

(added language underlined.)

Claim 17 was rejected as allegedly being anticipated by the Westblock sales literature (2-WS, 3-WS, and 4-WS) and the '256 patent. The Westblock sales literature (2-WS, 3-WS, and 4-WS) and the '256 patent fail to teach or suggest a retaining wall as defined in claim 17. In addition, claim 17 has been amended to include subject matter similar to what was previously recited in canceled claim 20 (one or more wall-reinforcing sheets), which was not rejected for anticipation by the '256 patent. Thus, the 35 U.S.C. § 102(b) rejections of claim 17 therefore should be withdrawn.

Independent Claim 26:

Independent claim 26 recites a retaining wall having a front surface and a back surface, the wall comprising:

a plurality of courses, a portion of each comprising a plurality of single blocks arranged side-by-side, each single block having a front surface in the front surface of the wall and a back surface in the back surface of the wall;

at least one tie-back sheet disposed between single blocks in adjacent courses;

a plurality of different courses, a portion of each comprising a plurality of block assemblies arranged side-by-side, each block assembly comprising a front block, at least one elongated trunk block connected to and extending rearwardly from the front block, and at least one anchor block connected to the trunk block opposite the front block; and

wherein the courses including the single blocks are located above or below the courses including the block assemblies.

Claim 26 was rejected as allegedly being anticipated by the Westblock sales literature (2-WS, 3-WS, and 4-WS). In contrast to claim 26, the Westblock sales literature (2-WS, 3-WS, and 4-WS) fails to teach or suggest a plurality of courses, a portion of each comprising a plurality of single blocks arranged side-by-side, a plurality of different courses, a portion of each comprising a plurality of block assemblies arranged side-by-side, wherein the courses including the single blocks are located above or below the courses including the block assemblies, and at least one tie-back sheet disposed between single blocks in adjacent courses. Thus, the 35 U.S.C. § 102(b) rejection of claim 26 therefore should be withdrawn.

Independent Claim 29:

Independent claim 29, as amended, recites a method of constructing a retaining wall, the method comprising:

forming a portion of a plurality of courses from a plurality of single blocks, each single block having a depth spanning the depth of the wall at each single block;

positioning a tie-back sheet between single blocks in adjacent courses, the tie-back sheet extending rearwardly into fill material retained behind the wall; and

forming a portion of a plurality of different courses from a plurality of block assemblies, each block assembly having at least two interlocking block components;

wherein the portion of courses formed from single blocks is constructed above or below the portion of courses formed from block assemblies.

Claim 29 was rejected as allegedly being anticipated by the Westblock sales literature (2-WS, 3-WS, and 4-WS) and the '256 patent. In contrast to claim 29, the Westblock sales literature (2-WS, 3-WS, and 4-WS) and the '256 patent fail to teach or suggest the method of

constructing a retaining wall recited in claim 29. Thus, the 35 U.S.C. § 102(b) rejections of claim 29 therefore should be withdrawn.

35 U.S.C. § 103 Rejection of Claims 26-28

Claims 26-28 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over the '256 patent in view of Applicant's prior art description. Applicant respectfully traverses the rejection and requests that it be withdrawn.

Independent Claim 26

Independent claim 26 recites a retaining wall comprising, *inter alia*, a plurality of courses, a portion of each comprising a plurality of single blocks arranged side-by-side, at least one tie-back sheet disposed between single blocks in adjacent courses, and a plurality of different courses, a portion of each comprising a plurality of block assemblies arranged side-by-side.

As discussed above, the '256 patent discloses only walls constructed from block assemblies, except at col. 5, lines 51-54, which states: "The face blocks alone may attach to anchors horizontally bored into a slope, or to any compatible anchor mounted to a vertical surface such as a building façade." The construction technique described at col. 5, lines 51-54 of the '256 patent requires drilling bores into the native embankment, inserting anchors into the bores, and attaching face blocks to the anchors. In contrast, a wall having tie-back sheets requires excavating the native embankment (usually to a depth equal to about 2/3 the height of the wall), laying the tie back sheets, and then back-filling the space between the wall and the native embankment. The '256 patent teaches away from using tie-back sheets in combination with face blocks supported by anchors because horizontal bores cannot be formed in the native embankment for receiving anchors for supporting the face blocks if the native embankment is excavated to install tie-back sheets. Thus, there is no teaching or suggestion to modify the '256 patent to include a tie-back sheet as required in claim 26.

35 U.S.C. § 103 Rejection of Claim 8

Claim 8, which has been amended so to depend from claim 1, stands rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over the '256 patent in view of 3-WS. Applicant respectfully traverses the rejection and requests that it be withdrawn.

The Office action concedes that the '256 patent does not teach a unitary block having a front portion, two side wall portions and a rear portion connected to the wall portions opposite the front portion and defining a core, as recited in claim 8. The action then contends that the

"Fill Site" selection chart of 3-WS teaches that a "unitary block and mini-cell block are substitutable for each other in the M.S.E. portion of a retaining wall." The action further contends that "it would have been obvious . . . to modify [the '256 patent] to substitute a unitary block for the upper mini-cell block depicted in FIG. 1 of [the '256 patent], such as taught by 3-WS, in order to reduce the amount of labor required because the unitary block does not require assembly at the site during construction of the retaining wall." This contention is incorrect.

The wall shown in FIG. 1 of the '256 patent does not include any geogrid, and therefore it is not an M.S.E. retaining wall. As pointed out by the examiner, 3-WS teaches that either the fat face or mini-cell system can be used in the M.S.E. portion of a wall. There is no teaching or suggestion in 3-WS that the fat face blocks and the mini-cell blocks are interchangeable in a non-M.S.E. wall.

Further, the block system disclosed in the '256 patent typically is used to construct walls without requiring substantial excavation of the native slope for installation. (Col. 2, lines 11-14 of the '256 patent.) In contrast, the M.S.E. fat face system disclosed in 3-WS may require substantial excavation of the native embankment to install geogrid (typically the geogrid extends to a depth behind the wall equal to about 2/3 the height of the wall). Excavation for installation of geogrid is costly and time consuming. Thus, replacing courses of block assemblies in a non-M.S.E. wall with courses of M.S.E. fat face blocks can actually increase the amount of labor if substantial excavation is required to install the geogrid for the fat face blocks. The notion that substituting M.S.E. fat face blocks for block assemblies at any location in a non-M.S.E. wall inherently reduces labor, as asserted by the action, is simply false. Whether or not this type of construction reduces overall labor would depend primarily on the location of the transition point of the wall (the location where the courses transition from a non-geogrid structure to a geogrid structure), which in turn depends on the site conditions and the overall height of the wall. Neither the '256 patent nor 3-WS explains how to reduce labor by substituting M.S.E. fat face blocks for block assemblies in a non-M.S.E. wall or why it would be desirable to do so.

For at least the foregoing reasons, the combination of the '256 patent and 3-WS cannot render claim 8 obvious under 35 U.S.C. § 103(a). Thus, Applicant respectfully requests the § 103(a) rejection of claim 8 be withdrawn.

Conclusion

For at least the foregoing reasons, Applicant submits that the rejections have been traversed. Additional arguments to distinguish each of the above references from the claims could have been made, but Applicant believe the foregoing sufficiently traverses all rejections. The dependent claims not specifically mentioned in the arguments above are patentable for the reasons given in support of their respective base claims and because each dependent claim recites an independently patentable combination of features. Therefore, the pending claims are in condition for allowance and such action is earnestly solicited. Please contact the undersigned by telephone if such contact would further the examination of the present application.

Respectfully submitted,

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